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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/975,230	10/11/2001	Meroni Bruno	J118-104 US	9595

7590 03/07/2002

NOTARO & MICHALOS P.C.
Empire State Building
Suite 6902
350 Fifth Avenue
New York, NY 10118-6985

EXAMINER

CANTELMO, GREGG

ART UNIT	PAPER NUMBER
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1753

DATE MAILED: 03/07/2002

4

Please find below and/or attached an Office communication concerning this application or proceeding.

T.D - 4

Office Action Summary

Application No.

09/975,230

Applicant(s)

BRUNO, MERONI

Examiner

Gregg Cantelmo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Telephone interview 2/6/02.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) 5-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 October 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☒ Interview Summary (PTO-413) Paper No(s). 3.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

DETAILED ACTION

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species of the claimed invention: group I, claims 2-4 drawn to a silicone dipped edge support; group II, claims 5-6 drawn to a plastic tray support; Group III, claims 7-8 drawn to a frame insert support.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record

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showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Mr. Peter C. Micholas on February 6, 2002 a provisional election was made without traverse to prosecute the invention of group I, claims 1-4. Affirmation of this election must be made by applicant in replying to this Office action. Claims 5-8 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Priority

3. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Italy on October 2001. It is noted, however, that applicant has not filed a certified copy of the Italian application as required by 35 U.S.C. 119(b).

4. Priority is unclear. See the declaration which cites that the priority document was filed on October 18, 2001. This appears to be 7 days *after* filing of the U.S Application herein. Therefore it is unclear how Applicant is claiming priority to a latter filed foreign document. Clarity with respect to the priority may raise issue with respect to the oath. However the status of the oath cannot be clearly ascertained until the priority is clarified. Applicant is advised to review the oath as well.

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Due to the issue regarding the filing date of the priority document and instant application, the Examiner is requesting that the priority document be submitted in Applicant's response to this office action. See MPEP 201.14(a).

For all applications, assuming the claim for foreign priority has been made, the latest time at which the papers may be filed without a processing fee (37 CFR 1.17(i)) is the date of the payment of the issue fee, except that, under certain circumstances, they are required at an earlier date. These circumstances are specified in the rule as: ... (C) when specifically required by the examiner.

Information Disclosure Statement

5. No IDS appears to have been filed with the application prior to this office action.

Drawings

6. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the support element being a threadlike metallic element must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

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7. The abstract of the disclosure is objected to because it is not a single paragraph.

Correction is required. See MPEP § 608.01(b).

8. The abstract of the disclosure is objected to because it exceeds 150 words. A 150-word limit has been imposed by the USPTO to conform to PCT applications and Pre-Grant Publications. See 37 CFR 1.72 and rule changes applied thereto. Correction is required. See MPEP § 608.01(b).

9. The disclosure is objected to because of the following informalities: on page 2, at line 5, "moud" should be mould.

Appropriate correction is required.

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (e) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) BRIEF SUMMARY OF THE INVENTION.

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- (g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (h) DETAILED DESCRIPTION OF THE INVENTION.
- (i) CLAIM OR CLAIMS (commencing on a separate sheet).
- (j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

For example the instant application fails to have a subheading for the Brief Description of the Drawings.

Claim Objections

10. Claims 1-4 are objected to because of the following informalities:
 - a. Use of the term characterized is not generally used in the manner employed in the claims. U.S practice preferably uses terms such as comprising, consisting, consisting essentially of, etc. Applicant is advised to replace the phrase "characterized by the fact to provide a " to comprising;
 - b. The term "support" in claim 2, line 2 should be support element.Appropriate correction is required.

Claim Rejections - 35 USC § 112

11. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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12. Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

13. Regarding claim 1, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention.

See MPEP § 2173.05(d).

a. Claim 1 recites the limitations "the strain" in line 4 and "the content" in line 5. There is insufficient antecedent basis for these limitations in the claim.

b. Claim 3 recites the limitation "the peripheral portion" in line 2. There is insufficient antecedent basis for this limitation in the claim.

c. The term "threadlike" in claim 4 is a relative term which renders the claim indefinite. The term "threadlike" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The instant application does not appear to define configurations that the instant invention appreciated to be "threadlike."

Claim Rejections - 35 USC § 102

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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15. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. patent No. 4,045,153 (Maurino).

Maurino discloses a flexible mould FM' comprising a silicone tray with an outward projecting edge 4 having a support element 7 in the edge 4 to give the mould a certain resistance (Fig. 2 and col. 3, ll. 1-3, 5, and 23-32 as applied to claim 1). The support element is embedded in the silicone flexible member at the peripheral portion 4 of the flexible mould FM'. No patentable weight is accorded the term dipping since the statutory class of invention is drawn to a product and not the manner in which the product is formed. Thus what is significant to claims 2 and 3 is the structural relationship of the product, not the dipping process (as applied to claims 2 and 3).

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maurino.

The teachings of claims 1-3 have been discussed above and are incorporated herein.

The difference not yet discussed is of the support element being a threadlike metallic element.

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Maurino teaches that the member can be a metallic tube, solid metal ring, or tightly coiled spring imbedded in the periphery of the flange (col. 3, ll. 23-32). Absent a clearer definition by the instant application regarding the term "threadlike" it is held that a tightly coiled spring when in such a configuration will have a continuous spiral recession between adjacent turns of the coil thereby rendering it "threadlike." Thus the tightly coiled spring is held to be an obvious variant of the term "threadlike."

Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. patent No. 3,981,656 shows a flexible mold which is supported at its edge by support elements. U.S. patent No. 6,197,359 discloses silicone moulds used as baking and confectionary moulds.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregg Cantelmo whose telephone number is (703) 305-0635. The examiner can normally be reached on Monday through Thursday from 8:00 a.m. to 5:30 p.m.

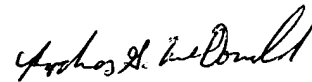
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nam Nguyen, can be reached on (703) 308-3322. FAX communications should be sent to the appropriate FAX number: (703) 872-9311 for After Final Responses only; (703) 872-9310 for all other responses. FAXES received after 4 p.m. will not be processed until the following business day.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

gc

February 26, 2002



RODNEY G. MCDONALD
PRIMARY EXAMINER